

AMENDED IN ASSEMBLY MAY 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 261

Introduced by Assembly Member Dickinson

February 7, 2011

An act to amend Sections 3712 ~~and 3725~~, 3725, *and 3731* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

AB 261, as amended, Dickinson. Property tax: tax-defaulted property.

Existing property tax law generally authorizes a county tax collector to sell tax-defaulted property 5 years or more, or 3 years or more, as applicable, after that property has become tax defaulted. Under existing law, when tax-defaulted property is sold, the deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, with specified exceptions including an exception for specified easements.

This bill would provide that easements of any kind, including prescriptive easements, are included within those specified exceptions to the conveyance of title free of encumbrances.

Existing law provides that a proceeding based on alleged invalidity or irregularity of any proceedings instituted in a sale of tax-defaulted property can only be commenced ~~within a specified period~~ *one year after the date of execution of the tax collector’s deed*. Existing law *authorizes the board of supervisors to rescind the sale of a tax deed sold by the tax collector, as provided, when it is determined that the property should not have been sold.*

~~This bill would provide that such a proceeding can only be commenced by recorded interest holders and their successors in interest~~

~~in the real property, as specified~~ *instead require any person wishing to have a tax deed sold by the tax collector rescinded due to alleged invalidity or irregularity of any proceeding to first petition the board of supervisors, as provided, to have the tax sale rescinded before the proceeding described above can be commenced in a court, and would require the court proceeding to be commenced within one year of the date the board of supervisors determines that a tax deed that has been sold should not be rescinded.*

By imposing new duties upon county officials with respect to tax-defaulted property, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3712 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 3712. The deed conveys title to the purchaser free of all
- 4 encumbrances of any kind existing before the sale, except:
- 5 (a) Any lien for installments of taxes and special assessments,
- 6 that installments will become payable upon the secured roll after
- 7 the time of the sale.
- 8 (b) The lien for taxes or assessments or other rights of any taxing
- 9 agency that does not consent to the sale under this chapter.
- 10 (c) Liens for special assessments levied upon the property
- 11 conveyed that were, at the time of the sale under this chapter, not
- 12 included in the amount necessary to redeem the tax-defaulted
- 13 property, and, where a taxing agency that collects its own taxes
- 14 has consented to the sale under this chapter, not included in the
- 15 amount required to redeem from sale to the taxing agency.

1 (d) Easements of any kind, including prescriptive, constituting
2 servitudes upon or burdens to the property; water rights, the record
3 title to which is held separately from the title to the property; and
4 restrictions of record.

5 (e) Unaccepted, recorded, irrevocable offers of dedication of
6 the property to the public or a public entity for a public purpose,
7 and recorded options of any taxing agency to purchase the property
8 or any interest therein for a public purpose.

9 (f) Unpaid assessments under the Improvement Bond Act of
10 1915 (Division 10 (commencing with Section 8500) of the Streets
11 and Highways Code) that are not satisfied as a result of the sale
12 proceeds being applied pursuant to Chapter 1.3 (commencing with
13 Section 4671) of Part 8, or that are being collected through a
14 foreclosure action pursuant to Part 14 (commencing with Section
15 8830) of Division 10 of the Streets and Highways Code. A sale
16 pursuant to this chapter shall not nullify, eliminate, or reduce the
17 amount of a foreclosure judgment pursuant to Part 14 (commencing
18 with Section 8830) of Division 10 of the Streets and Highways
19 Code.

20 (g) Any federal Internal Revenue Service liens that, pursuant
21 to provisions of federal law, are not discharged by the sale, even
22 though the tax collector has provided proper notice to the Internal
23 Revenue Service before that date.

24 (h) Unpaid special taxes under the Mello-Roos Community
25 Facilities Act of 1982 (Chapter 2.5 (commencing with Section
26 53311) of Part 1 of Division 2 of Title 5 of the Government Code)
27 that are not satisfied as a result of the sale proceeds being applied
28 pursuant to Chapter 1.3 (commencing with Section 4671) of Part
29 8, or that are being collected through a foreclosure action pursuant
30 to Section 53356.1 of the Government Code. A sale pursuant to
31 this chapter shall not nullify, eliminate, or reduce the amount of a
32 foreclosure judgment pursuant to Section 53356.1 of the
33 Government Code.

34 ~~SEC. 2. Section 3725 of the Revenue and Taxation Code is~~
35 ~~amended to read:~~

36 ~~3725. Notwithstanding Part 2 (commencing with Section 307)~~
37 ~~of the Code of Civil Procedure, a proceeding based on alleged~~
38 ~~invalidity or irregularity of any proceedings instituted under this~~
39 ~~chapter can only be commenced by recorded interest holders and~~
40 ~~their successors in interest in the real property sold at the~~

1 ~~challenged tax sale within one year after the date of execution of~~
2 ~~the tax collector's deed.~~

3 ~~Sections 351 to 358, inclusive, of the Code of Civil Procedure~~
4 ~~do not apply to the time within which a proceeding may be brought~~
5 ~~under this section.~~

6 *SEC. 2. Section 3725 of the Revenue and Taxation Code is*
7 *amended to read:*

8 3725. (a) A proceeding based on alleged invalidity or
9 irregularity of any proceedings instituted under this chapter can
10 only be commenced ~~within one year after the date of execution of~~
11 ~~the tax collector's deed.~~ *in a court if both of the following are*
12 *satisfied:*

13 *(1) The person commencing the proceeding has first petitioned*
14 *the board of supervisors pursuant to Section 3731 within one year*
15 *of the date of the execution of the tax collector's deed.*

16 *(2) The proceeding is commenced within one year of the date*
17 *the board of supervisors determines that a tax deed sold under*
18 *this part should not be rescinded pursuant to Section 3731.*

19 **Sections**

20 (b) Sections 351 to 358, inclusive, of the Code of Civil
21 Procedure do not apply to the time within which a proceeding may
22 be brought under this section.

23 (c) *The amendments made to this section by the act adding this*
24 *subdivision shall apply to sales that are completed on or after*
25 *January 1, 2012.*

26 *SEC. 3. Section 3731 of the Revenue and Taxation Code is*
27 *amended to read:*

28 3731. (a) When a tax deed to a purchaser of property sold by
29 the tax collector pursuant to this part is recorded and it is
30 determined that the property should not have been sold, the sale
31 may be rescinded by the board of supervisors with the written
32 consent of the county legal adviser and the purchaser of the
33 property or a successor in interest in the property, except a bona
34 fide purchaser for value, under any of the following circumstances:

35 (1) The property has not been transferred or conveyed by the
36 purchaser at the tax sale to a bona fide purchaser for value.

37 (2) The property has not become subject to a bona fide
38 encumbrance for value subsequent to the recordation of the tax
39 deed.

1 (b) If the written consent of the purchaser of the property or a
2 successor in interest is not obtained pursuant to subdivision (a),
3 the sale may be rescinded by the board of supervisors pursuant to
4 the circumstances specified in subdivision (a), if both of the
5 following conditions are met:

6 (1) Notwithstanding Section 3731.1, a hearing is scheduled
7 before the board of supervisors.

8 (2) (A) A notification is provided to the purchaser of the
9 property or a successor in interest that contains all of the following
10 information:

11 (i) The date, time, and place of the hearing.

12 (ii) A description of the property that was sold.

13 (iii) The reason for rescinding the sale of the property.

14 (iv) A statement that a refund will be issued to the purchaser of
15 the property or the successor in interest, if applicable, for the
16 purchase amount of the property plus interest at the county pool
17 apportioned rate as specified in Section 5151 from the date of the
18 purchase of the property.

19 (B) The tax collector shall send the notice, not less than 45 days
20 prior to the date of the hearing, to the purchaser of the property or
21 a successor in interest by certified mail with return receipt
22 requested. The notice shall be sent to the last known mailing
23 address of the purchaser of the property or a successor in interest.

24 (c) When the sale of tax-defaulted property is rescinded pursuant
25 to this section, the purchaser or a successor in interest is entitled
26 to a refund of the amount paid as the purchase price plus interest
27 at the county pool apportioned rate as specified in Section 5151
28 from the date of the purchase of the property after rescission of
29 the tax deed is recorded.

30 (d) The rescission shall be executed by the county tax collector
31 and, if rescinded pursuant to subdivision (a), also by the purchaser
32 or a successor in interest. The signature of both the county tax
33 collector and the purchaser or a successor in interest shall be
34 acknowledged by the county clerk, without charge, and the county
35 tax collector shall then record the rescission with the county
36 recorder, without charge. When the rescission is recorded, the tax
37 deed becomes null and void as though never issued and all
38 provisions of law relating to tax-defaulted property shall apply to
39 the property.

1 (e) The holder of a tax certificate who received all or any part
2 of the amount paid by the purchaser or a successor in interest shall
3 not be obligated to make any refund or repayment of any amount
4 to the purchaser, the delinquent taxpayer, the county, or any other
5 person. The tax collector may use amounts on deposit in the Tax
6 Certificate Redemption Fund to make the refund, but only to the
7 extent those amounts were paid to the holder of the applicable tax
8 certificate.

9 (f) Subdivision (b) shall apply to sales that are completed on or
10 after January 1, 2010.

11 (g) *A proceeding may be commenced in a court pursuant to*
12 *Section 3725 only if the person commencing the proceeding first*
13 *petitions the board of supervisors to rescind the sale of a tax deed*
14 *pursuant to this section.*

15 *SEC. 4. If the Commission on State Mandates determines that*
16 *this act contains costs mandated by the state, reimbursement to*
17 *local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*